



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

August 4, 2004

Robert and Diana Nielson
PO Box 591
Mackay, ID 83251

Re: Mitigation Plan for 2004 Irrigation Season

Dear Mr. And Mrs. Nielsen,

The Idaho Department of Water Resources ("Department") is in receipt of your letter dated July 20, 2004 that proposes a mitigation plan in response to the Department's Order in the Matter of Distribution of Water Rights 34-372A, 34-372B, and 34-690B, Dated July 12, 2004, and amended on July 23, 2004. I sent you a separate letter dated July 27, 2004 that responded to your petition for reconsideration of the Department's Orders of July 12 and 23, 2004. I see from review of my July 27th letter that I inadvertently addressed you as Mr. And Mrs. McAfee. Please accept my apology for this error.

Your proposed mitigation plan essentially involves reducing the use of ground water. IDWR has determined that this is not an acceptable mitigation plan. The purpose of mitigation is to provide replacement water or other compensation to senior surface water right holders in order to be allowed to continue to divert junior ground water rights out-of-priority. Any diversion of ground water from your well is out-of-priority with respect to senior surface water rights, regardless of whether or not your are diverting less water than normal. Your individual plan provides no direct replacement water or other direct compensation to senior surface water rights.

The Department has accepted a mitigation plan from a group of water users in Water District 34 that provides direct mitigation, in the form of replacement water, to the senior surface water right holders that have made the delivery call. Under this plan, you are only required to pay or mitigate for the amount of ground water that you divert in 2004, which we believe may be less than \$20 per user on average. You may wish to consider joining this group, or you may want to continue working with the group represented by the Rigby law firm on some form of acceptable mitigation. The Department is allowing several additional days for the Rigby group to propose some acceptable alternative mitigation. The Department intends to proceed with curtailment of ground water diversions that are not represented by an acceptable plan.

Please contact me directly at the above office if you have further questions regarding this matter.

Respectfully,

Tim Luke
Manager, Water Distribution Section

Cc: Gary Spackman, IDWR
Bob Duke, Water District 34 Watermaster